IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/12/2002

CORAM

THE HONOURABLE MR.JUSTICE P.SATHASIVAM

Crl.R.C.No.1703 OF 2002

1. Chenna
2. Minor Thangaraj
3. Minor Vijaya
(Minors 2 and 3 rep. by Next friend
and Guardian, Mother - First Petitioner) ... Petitioners

-Vs-

Mathiyalagam @ Chinnaraj ... Respondent

Prayer: Revision case against the order dated 16.04.2002 in CRP.No.2
7 of 1998 on the file of the Second Additional Sessions Judge, Salem reversing the order dated 30.03.1998 in M.C.No.1 of 1996 on the file of the Judicial Magistrate No.II, Mettur.

!For Petitioners : Mr. V.Srinivasan

^For Respondent : No appearance

:ORDER

Aggrieved by the order of the Second Additional Sessions Judge, Salem dated 16.04.2002, made in CRP.No.27 of 1998, reversing the order dated 30.03.1998, made in M.C.No.1 of 1996 on the of the Judicial Magistrate No.II, Mettur, the petitioners have preferred the above revision before this Court.

2. According to the first petitioner, the marriage between herself and the respondent took place on 25.10.1989 at Dasakaradu Perumal Koil, Panapuram, as per their caste custom. Out of the said wedlock, the petitioners 2 and 3 were born to them. It is the further case of the first petitioner that from the beginning, the parents of the respondent were not extending co-operation in running the family and always giving pinpricks to the first petitioner. She has also stated that the respondent often ill-treated her and the respondent driven her away from the matrimonial home along with their child. It is further stated that in spite of variation, the respondent continued the illtreatment. Having no remedy and unable to maintain herself, the petitioners filed M.C.No.1 of 1996 before the Judicial Magistrate No.II, Mettur claiming Rs.500/- per month for each one of them.

3. The respondent filed a counter statement disputing various

averments including the marriage said to have taken place on 25.10.1989 and the place as alleged by the first petitioner.

4. Before the trial Court, the first petitioner herself was examined as P.W.1 and one Palanisamy was examined as P.W.2 and also marked Exs.P.1 to P.5 in support of their claim for maintenance. On the other hand, the respondent himself was examined as R.W.1 and no documentary evidence was let in.

5. The learned Magistrate on appreciation of the oral and documentary evidence and after holding that there was a valid marriage between the first petitioner and the respondent and petitioners 2 and 3 were born to them, granted the maintenance at the rate of Rs.350 to the first petitioner, Rs.250 to the second petitioner and Rs.150 to the third petitioner. Aggrieved by the said order, the respondent herein has preferred the revision in CRP.No.27 of 1998 before the Second Additional Sessions Judge, Salem.

6. The learned Sessions Judge disbelieved the case pleaded by the petitioners and after holding that the first petitioner failed to establish her marriage with the respondent and also failed to establish that the petitioners 2 and 3 were born out of the wedlock, set aside the order of the learned Magistrate and dismissed the maintenance petition, hence the present revision made by the wife and the children.

7. The learned counsel appearing for the petitioners by drawing my attention to the categorical statement made in the petition, evidence of P.W.1, P.W.2, one of the panchayatdars as well as Ex.P.5 and the birth certificates of the petitioners 2 and 3, Exs.P.3 and P.4 respectively would contend that the conclusion arrived at by the learned Sessions Judge cannot be sustained. He also argued that with the weighty evidence on the side of the petitioners regarding the proof for marriage and the birth of petitioners 2 and 3, the respondent/husband has not examined any one or marked any document except his oral evidence.

8. I have already referred to the specific case pleaded in the maintenance petition namely that the first petitioner married to the respondent on 25.10.1989 at Dasakaradu Perumal Koil, Panapuram according to their custom. It is also asserted that the petitioners 2 and 3 were born to them. In support of her claim, she deposed before the Court regarding the factum of marriage and the children born to them. It is also her case that in view of the dispute between the first petitioner and the respondent, the matter was discussed by the panchayatdars and a muchalika was executed on 28.10.1996, which has been marked as Ex.P.5. Apart from the evidence of P.W.1, one Palanisamy who witnessed the marriage that took place on 25.10.1989 at Dasakaradu Perumal Koil, Panapuram and one of the signatories of Muchalika Ex.P.5 dated 28.10.1996 was examined as P.W.2. He asserted before the Court that he participated in the marriage apart from the other relatives and friends. He also stated that the first petitioner and the respondent lived together as husband and wife and petitioners 2 and 3 were born to them. After going through his oral testimony and the contents of Ex.P.5, Muchalika, I do not find any reason to reject his testimony.

9. In addition to the evidence of P.W.2 and Ex.P.5, the petitioners have also produced birth certificates of petitioners 2 and 3 and marked as Exs.P.3 and P.4. As rightly observed by the learned Magistrate, in both birth certificates, the names of the first petitioner and the respondent have been mentioned as mother and father of the children. As rightly argued by the learned counsel for the petitioners, the entries in birth and death certificates are public documents and the same are admissible under Section 35 of the Indian Evidence Act. The learned Sessions Judge though noted Ex.P.3 and P.4, committed an error in discarding both the documents without any acceptable reason. 10. It is true that it is the petitioners who have to allege and establish the factum of marriage and their entitlement for maintenance. In this case, I am of the view that the petitioners have established their case regarding the marriage between the first petitioner and the respondent on 25.10.1989 and also the birth certificates of the petitioners 2 and 3 out of their wedlock, by placing acceptable evidence. Though the petitioners have not examined other persons in addition to P.W.2 in a matter like this, there is no need to examine several persons who participated in the marriage. I have already referred to the evidence of P.W.2, his specific assertion regarding the factum of marriage and the birth of petitioners 2 and 3. It is to be noted that P.W.2 is also one of the attestors of Ex.P.5 dated 28.10.1996.
11. Considering all these materials and in the absence of any other contra evidence except the ipse dixit of R.W.1, I am of the view that the learned Magistrate is perfectly right in accepting the case of the petitioners and the learned Sessions Judge committed an error in rejecting their case and the same is liable to be set aside.

12. Even regarding the quantum of maintenance, the learned Magistrate has considered the fact that the first petitioner/wife is unable to maintain herself and the fact that the respondent is possessed of agricultural lands and getting sufficient income.

13. Looking at any angle, I am unable to accept the reasoning of the learned Sessions Judge and I am in agreement with the conclusion arrived at by the learned Judicial Magistrate No.II, Mettur. Consequently, hence the order of the Second Additional Sessions Judge, made in CRP.No.22 of 1998 dated 16.04.2002 is set aside and the order of the learned Judicial Magistrate -II, Mettur in M.C.No.1 of 1996 dated 30.0 3.1998 is restored.

14. In the result, the Criminal Revision case is allowed.

Index:Yes
Internet:Yes

KSR

To
1. The Second Additional
Sessions Judge,
Salem

2. The Judicial Magistrate No.II
Mettur.